Henderson Elevator Co. v. *North Georgia Milling Co.*, 126 Ga. 279, 55 S. E. 50, 5 MICH. L. REV. 298; *Christian* v. *Knight & Co.*, 128 Ga. 501, 57 S. E. 763; *Langston & Co.* v. *Neely & Co.*, 8 Ga. App. 64, 68 S. E. 559. But the courts uniformly hold that in the absence of a provision in the contract for an inspection, where the goods are shipped from a distance, a failure to inspect will not waive an express warranty against patent defects. *Springer* v. *Indianapolis Brewing Co.*, supra; *Carolina Portland Cement Co.* v. *Turpin*, 126 Ga. 667, 55 S. E. 125; *Christian* v. *Knight & Co.*, supra; *Northwestern Cordage Co.* v. *Rice*, 5 N. D. 532, 67 Am. St. Rep. 563, 67 N. W. 298. Therefore the principal case would probably have been decided the same way in Georgia if the defendant did not learn of the defects until after acceptance. The Wisconsin rule seems to be that the vendee must, when he receives the goods and discovers the defects, or a reasonable time thereafter, notify the seller that the goods are defective or else the warranty is waived. *Waupaco Elect. & Ry. Co.* v. *Milwaukee Light & Ry. Co.*, 112 Wis. 469, 88 N. W. 308; *Northern Supply Co.* v. *Wangard*, 117 Wis. 624, 98 Am. St. Rep. 963, 94 N. W. 785. And since the defendant failed to do this, the Wisconsin courts would have denied his set-off.

SPECIFIC PERFORMANCE—PRAYER IN ALTERNATIVE FOR DAMAGES UNDER THE CODE.—Plaintiff sued to recover damages for the breach by defendant of a contract to exchange real properties. Until this suit was filed by the plaintiff the contract was invalid as to him. Defendant set up a cross-petition, alleging that plaintiff breached the contract and asked for specific performance, with a prayer in the alternative for damages. Defendant, when he filed his cross-petition, knew that plaintiff had put it beyond his power to perform. After holding that the contract had been ratified by this suit, the court rendered judgment in damages for defendant as prayed in the cross-petition. *Stramel* v. *Howes*, (Kan. 1916) 154 Pac. 232.

Under the blending of law and equity by means of the Code one may pray for specific performance or in the alternative for damages. *Mitchell* v. *Sheppard*, 1 Tex. 484. Yet under the Code specific performance is still an equitable remedy and it is granted within the discretion of the court. *Snow* v. *Monk*, 80 N. Y. Supp. 719, 81 N. Y. App. Div. 206. Some equity rules which formerly obtained have been changed by the Code. The rule that, where the plaintiff knew at the commencement of an action for specific performance that the defendant could not perform, the suit will not be retained for the purpose of awarding damages, has been abrogated. *Sternberger* v. *McGovern*, 56 N. Y. 12; *Haffey* v. *Lynch*, 143 N. Y. 241, 38 N. E. 298. But see *Park* v. *Minneapolis, etc. Ry. Co.*, 114 Wis. 347, 89 N. W. 532; *Wigglesworth* v. *Wigglesworth*, 45 Wis. 255. Judgment, however, should not be in the alternative. *Levy* v. *Knepper*, 117 N. Y. App. Div. 163, 102 N. Y. Supp. 313. In the case under discussion it was insisted by plaintiff that, since the granting of specific performance still depends upon the court's discretion the alternative prayer for damages should also depend upon discretion. Such principle was not applied because the relief granted was at law, which had been united with the equitable petition in accordance with the Code.